(24)

of 17.08.06

Single Bench

Division Bench

IN THE HIGH COURT OF JUDICATURE AT BILASPUR (C.G.).

F.A.NO. 239 /05.

PLAINTIFF/APPELLANT.

... RAJESH DHARIWAL Son of
Inderchand Dhariwal, Owner
of M/s. Raipur Tar Products
Industrial area, Raipur,
Address-45/4, Sadar Bazar, Raipur
Tahsil and District Raipur(C.G.).

P.R. No. 2809/06
Prec. Deepak Vaswani
decd. 19/11/06

VERSUS.

DEFENDANT/RESPONDENT :

... LLOYD BITMEN PRODUCTS
No.2 Kalkaji Industrial area
Post Box No.2, Kalkaji,
New Delhi-19.

XI-HC-22

(37)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक F.A. No. 239 सन् 2005

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	02/02/2007 Shri G.D. Vaswani, counsel for the appellant. Heard. Learned counsel for the appellant Shri G.D. Vaswani, prays that this appeal may be finally disposed of at the stage of admission in view of the peculiar facts and circumstances of the case. Brief facts are that the appellant/plaintiff instituted a Civil Suit No.4-B/2004 for recovery of money against the respondent/defendant. The order-sheet reveals that on 28.04.2005 upon receipt of acknowledgement of notice by the defendant (which document is not on record sent by the lower Court), the Court proceeded exparte against the defendant and thereafter adjourned the case to 2.5.2005 for recording exparte evidence of the plaintiff. Thereafter, the appellant/plaintiff sought adjournments on 2.05.2005, 17.6.2005, 14.7.2005 and 3.8.2005. On 3.8.2005, the application filed by Shri Suresh Verma, learned counsel for the plaintiff under order 17 Rule 1 C.P.C. for adjournment stating therein that the plaintiff who had, due to a family work, gone to Indore had not returned and another date may be given for recording evidence of the plaintiff. However, the learned Fifth Additional District Judge, Raipur without any justifying reason, came to the conclusion that the prayer was not bona fide. It rejected the application under Order 17 Rule 1 of C.P.C. and closed the case of the plaintiff. Instead of pronouncing the judgment on the same date, it adjourned the case for arguments on 5.8.2005 whereas no arguments were necessary in the absence of any evidence. On 5.8.2005, the learned 5th Additional District Judge, Raipur wrote in the order-sheet that arguments were heard but did not pronounce judgment even on that date and adjourned the case to 8.8.2005 for pronouncement of judgment. Finally on 8.8.2005, the impugned judgment was delivered whereby the plaintiff's suit was dismissed.	

XI-HC-22

(38)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

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	-2-	

I am of the considered opinion that the impugned judgment passed by 5th Additional District Judge, Raipur does not show any justifiable reason for rejecting the application under Order 17 Rule 1 of C.P.C. because there was nothing to show that the absence of plaintiff was deliberate or not bona fide. Unless there were reasons to satisfy the Court that the plaintiff was deliberately avoiding to remain present and to adduce exparte evidence, which the plaintiff would, in no case wish to do, the learned 5th Additional District Judge, Raipur ought not to have refused the prayer. It should have granted a conditional adjournment to the plaintiff's counsel that upon failure to adduce evidence on the next date, the Court shall proceed to pronounce judgment. Having not done so, the impugned judgment and decree is liable to be set aside.

Shri G.D. Vaswani, learned counsel for appellant/plaintiff very fairly submitted that the learned lower Court may also be directed to issue notice to the defendant before proceeding with the suit.

In the facts and circumstances mentioned above, this appeal is allowed. The impugned judgment passed in Civil Suit No. 4-B/2004 is set aside. The learned Fifth Additional District Judge, Raipur is directed to issue fresh notice to the defendant and thereafter dispose of Civil Suit in accordance with law. Record of Civil Suit be returned to the lower Court. There shall be no order as to costs.

C.C. as per rules.

Sd/-
Dilip Raosaheb Deshmukh
Judge

Kvr